



WISCONSIN REGULATORY DIGEST

A Publication of the
DEPARTMENT OF REGULATION AND LICENSING
Volume 11, No. 2 **FOR REAL ESTATE LICENSEES** **October, 1998**

A Message from the Chair, by James R. Imhoff, Jr.
My messages in the last two issues of the Regulatory Digest have actually served as a prelude to the primary contents of this Digest. I had addressed several issues relating to buyer-agency and told you about a Buyer-Agency Advisory Committee, appointed by Secretary Marlene Cummings and chaired by me. The committee has now completed its work and submitted its recommendations to the Real Estate Board and Secretary Cummings. The complete report is published in this issue of the Digest.

Please note that the committee report is actually an educational document for licensees. The recommendations of the committee are based on current statutes and rules. They create no new requirements; however, they do clarify existing requirements and recommend one rule change. In addition, they frequently refer to "prudent practice."

THE WISCONSIN REAL ESTATE BOARD

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"Prudent practice" is not something you are required to do. It is something you may want to consider doing to avoid misunderstandings and problems.

Our thanks to the committee members!

Recommendations of Buyer-Agency Committee Dated July, 1998

A Buyer-Agency Committee was appointed by Secretary Marlene Cummings in January, 1998, and was chaired by the Chairman of the Real Estate Board, James Imhoff, Jr. The 20-member committee held 4 meetings and agreed to the following recommendations:

Item #1 Cooperation Of Listing Broker

Pursuant to the language of the listing contracts approved by the Department of Regulation and Licensing, cooperation is mandated unless a seller and the listing broker agree otherwise. Current administrative rules only address specific activities related to cooperation, such as presentation of offers and access for showings.

In the event that a seller and a listing broker agree to limit cooperation with other agents (buyer agents and subagents), the listing broker must modify the terms of the listing contract accordingly. If the effect of the limited cooperation is material to the seller's ability to market the property, the listing

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broker must notify the seller as to the ramifications of non-cooperation. Prudent practice suggests that the notification should be in writing.

The committee has recommended that the Contractual Forms Advisory Council consider adding a “caution” to this effect in the listing contracts.

Item #2 Negotiations

Current rules require all negotiations with the seller to be through the listing broker. Currently the rules do not explicitly state that, similarly, all negotiations with the buyer must be through the buyer’s agent. A rule change should be made. Also, WB-36 should be revised to be an exclusive agency agreement as to location of properties and an exclusive right to negotiate.

The committee discussed questions as to when a buyer’s agent may negotiate directly with the seller who has an exclusive listing agreement currently in effect with a listing broker, or when a listing agent may negotiate directly with a buyer who is working with a buyer’s agent. The answer in both cases appears to be “only with the consent of the other party’s agent.” Buyer’s agent’s may negotiate with For-Sale-By-Owner (FSBO) sellers upon compliance with agency disclosure laws.

Another question discussed by the Committee was: “Does the buyer’s agent have the right to be present when the terms of the offer are presented?” The answer was “no,” except with permission of the seller and seller’s agent. Incidentally, the REALTOR MLS rules provide a buyer’s agent the right to be present only to observe delivery.

A third question was: “Can listing companies dictate policy to a buyer’s agent as to how an offer must be written?” The answer was “no.” The terms of the offer originate with the buyer. The seller can dictate minimum terms; however, the listing broker may be prudent to get seller’s specific instructions in writing so as to document compliance with s. RL 24.13(1), Wis. Admin. Code.

Item #3 Buyer Agents Selling FSBO

It is prudent practice for buyer’s agents to recommend in writing that the FSBO seller with whom the buyer’s agent is negotiating obtain legal counsel to review the contracts.

Item #4 Notice Of Agency To Listing Broker

When showing a listed property, a buyer’s agent is required to comply with s. RL 24.07(8)2, Wis. Admin. Code, which provides:

Licensees acting as agents of potential buyers of real estate used or intended to be used principally for 1- to 4-family residential purposes, who are aware that the owner of the real estate has granted another licensee the exclusive right to sell, shall notify the listing broker of the licensee’s buyer-agency relationship at the earlier of all of the following:

1. The first contact with the listing broker where information regarding the seller or the transaction is being exchanged.
2. A showing of the property.
3. Any other negotiation with seller or listing broker.

Item #5 When Must/Should An Agent Be A Buyer’s Agent

A) Immediate family or other relative?

The rules do not require buyer-agency; however, it may be the most prudent practice to obtain written consent to the potential conflict from all parties no later than in the offer, as current rules (RL 24.05(2)) do require the licensee to obtain such written consent. Note: When discussing this issue, discussion was also held concerning recommending review of the current definition of “immediate family.”

B) Business associates, partners, etc.

The rules do not require buyer-agency but it may be the most prudent practice. Certainly, without buyer agency the licensee must obtain the written consent to the potential conflict from all parties no later than when drafting the offer per s. RL 24.05(2), Wis. Admin. Code.

C) Licensee has buyer’s current property listed.

It may be prudent practice to also act as the buyer’s agent when the buyer purchases real estate. The seller/buyer may wish to consider the advantages of maintaining agency representation during the buying process. However, all agency relationships present advantages and disadvantages for a party and it cannot be presumed that buyer-agency will be the appropriate relationship in any given transaction or under any given fact situation.

Item #6 Duties And Obligations Of Buyer Agents/Seller Agents

May a licensee:

- A) Recommend or suggest an offering price or give an opinion of the seller’s asking price?

Seller Agent:	Yes	<u> </u>	No	<u> X </u>
Buyer Agent:	Yes	<u> X </u>	No	<u> </u>

- B) Give a negative opinion or critique of seller's property (beyond disclosing defects)?

Seller Agent:	Yes	<u> </u>	No	<u> X </u>
Buyer Agent:	Yes	<u> X </u>	No	<u> </u>

- C) Disclose the existence of another offer or a previous offer (not terms)?

Seller Agent:	Yes	<u> X </u>	No	<u> </u>
Buyer Agent:	Yes	<u> X </u>	No	<u> </u>

- D) Disclose the seller's motivation to sell (without seller's permission)?

Seller Agent:	Yes	<u> </u>	No	<u> X </u>
Buyer Agent:	Yes	<u> </u>	No	<u> X </u>

- E) Reveal seller's willingness to accept a lower price (without seller's permission)?

Seller Agent:	Yes	<u> </u>	No	<u> X </u>
Buyer Agent:	Yes	<u> </u>	No	<u> X </u>

- F) Recommend and assist the buyer in negotiation strategies?

Seller Agent:	Yes	<u> </u>	No	<u> X </u>
Buyer Agent:	Yes	<u> X </u>	No	<u> </u>

- G) Disclose confidential information of the buyer? (unless disclosure is required)

Seller Agent:	Yes	<u> </u>	No	<u> X </u>
Buyer Agent:	Yes	<u> </u>	No	<u> X </u>

Item #7 Procuring Cause

A lengthy discussion was held on this issue and how it affects buyer agency. It is a complicated issue and there are no precedents set, as each case is different.

The committee did arrive at two conclusions:

1. Buyer's agents must do a better job of informing their clients to always explain to other licensees that they, the clients, do have a valid agency contract. Then, if the rules are amended as outlined in Item #2, requiring all negotiations to be through the buyer's agent, the other licensee would be obligated to honor the notice of agency.
2. It is prudent practice for all licensees to ask prospects when at the first meeting with them:

"Do you have a valid buyer-agency contract now in force?"

Informing licensees of these matters can be accomplished through the many education programs and publications existing throughout the state.

Item #8 Buyer-Agent's Fee As A Condition In The Offer To Purchase

It is legal for the buyer to draft an offer requesting the seller to pay the buyer's agent directly or credit the amount of the buyer's agent's fees to buyer, and the buyer has the right to direct the buyer's agent to do so. There is no relationship between the amount that the co-broker is offering for compensation to the buyer's broker and what the buyer's broker and the buyer have agreed to for compensation.

Likewise, it is the listing broker's decision as to amending the commission portion of the listing contract when such an offer is received.

The listing company may not dictate the terms of the offer. However, the seller can tell the listing broker the minimum terms that the seller will even consider and direct the listing broker not to present offers without those terms. It would be prudent for the listing broker to get this direction in writing, so that the compliance with the requirement to "present all offers" can be documented. Ordinarily, because of the importance of this direction (offers may not be presented), it would be appropriate for the listing broker to fully address the ramifications of this direction, so that an informed, written, consent can be provided by the seller.

Item #9 Dual Agency

While the required forms (listing, buyer agency, agency notifications to both buyer and seller) do provide for authorization of dual agency, it is prudent for licensees to provide additional explanation and disclosure to clients and customers in dual agency situations.

Item #10 Advertising

A brief discussion was held regarding caution to buyer agents using misleading advertising in relation to Wisconsin law. The primary issue seemed to be that use of marketing materials developed in other states may not accurately reflect Wisconsin agency law or may overemphasize the advantages of buyer agency over other relationships. It was explained that the Real Estate Board has looked at this issue and has drafted a caution letter to the parties involved.

Item #11 Approved Forms

Buyer's agents are subject to RL 16.04, Wis. Admin. Code, which says:

- 1) Except as provided in subs. (2) and (3), a licensee shall use approved forms when acting as an agent or a party in a real estate or business opportunity transaction.
- 2) For those kinds of real estate or business opportunity transactions for which the department has not approved contractual forms a licensee, when acting as an agent or a party, may use contractual forms drafted by a party or an attorney, if the name of the drafter is imprinted on the form before use by a licensee. For the purpose of this subsection, a listing broker is a party to the listing contract transaction.
- 3) A licensee may in any transaction where the licensee is acting as an agent, negotiate an agreement and permit the parties or an attorney for one or other of the parties to draft or prepare a contractual agreement which embodies all of the negotiated terms and conditions.

Legislative Changes

1997 Wis. Act 139. Examining boards, the department and other regulatory authorities are authorized to issue administrative warnings under a new law effective May 5, 1998. An administrative warning may be issued to close an investigation if a regulatory authority determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the warning protects the public.

Under this act, an administrative warning puts the professional on notice that if the misconduct is repeated, the incident that was the basis for the warning can be used to prove that the person warned knew the conduct was prohibited. A warning is not discipline and may be issued without a formal complaint or a hearing. The contents of the warning shall be private and confidential.

A credential holder may have a warning reviewed before the department or board that issued the warning. The act requires the department to promulgate rules establishing uniform procedures for administrative warnings. 1997 WI Act 139 is available from the department and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

1997 Wis. Act 191. In April 1998, legislation was enacted which provides for suspension of credentials for failure to pay support or for failure to comply with a subpoena or warrant related to paternity or

support proceedings. The determination of failure to pay support or failure to comply with a warrant or subpoena will be made by county support agencies or the Department of Workforce Development.

The Department of Workforce Development, after proper notice and provision for hearing, will certify to the Department of Regulation and Licensing that a professional who holds a credential issued by the department, or who is paying for a credential is delinquent in support or has failed to comply with a subpoena or warrant. The department then shall restrict, limit or suspend a credential or deny an application for an initial credential or for renewal of a credential. The credential will remain restricted, limited or suspended until the department receives notification of release from the Department of Workforce Development. However, credentials shall not be sanctioned for more than five years, if instituted because of delinquency in support, or for more than six months if instituted for failure to comply with a subpoena or warrant. This act became effective in April 1998. 1997 WI Act 191 is available in most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

The new Family Support Collection Act requires the Department of Regulation and Licensing to collect social security numbers from all individuals who apply for new credentials. Applications from individuals who do not submit their social security number will be denied. The social security numbers collected may be disclosed only to the Department of Workforce Development for the purpose of enforcing the Family Support Collection Act, or the Department of Revenue for the purpose of checking for tax delinquencies.

1997 Wisconsin Act 237. Since 1996, the law has required the department to verify that applicants for credential renewal are not delinquent in payment of Wisconsin state taxes. The department is required to deny renewal if the Department of Revenue certifies that an applicant is tax delinquent.

Effective January 1, 1999, the scope of the law will expand to apply to other state agencies, including the Department of Transportation and the Department of Natural Resources. The law will also change to include applicants for new licenses and current credential holders. After January 1, 1999, the Department of Regulation and Licensing is required to deny the applications for an initial credential if the applicant is certified by the Department of Revenue as being liable for delinquent state taxes. The department will also be required to revoke the

credential of current credential holders who are tax delinquent.

A person denied or revoked because of a tax delinquency status may request the Department of Revenue to review the certificate of tax delinquency at a hearing.

The text of the new law is in 1997 Act 237 at section 307 and sections 532-551. Act 237 is available at most public libraries and can be viewed on the Internet at <http://www.legis.state.wi.us/billtext/acts/97acts.html>.

Disciplinary Actions

JOYCE E. ANDERSON, BROKER
MONROE WI SUSPENDED
(at least six months)

Failed to diligently exercise reasonable skill and care in providing brokerage services to all parties. Failed to place all commitments of the parties into appropriate written documents. Failed to diligently exercise reasonable skill and care in providing brokerage services to all parties. Failed to maintain and be responsible for a bookkeeping system. Failed to maintain sufficient funds in her real estate trust account. Failed to provide appropriate supervision of a salesperson. Failed to loyally represent her client's interests and made a false promise of a character such as to influence, persuade or induce the seller to his or her injury or damage. Inappropriately contacted persons having listings with other brokers. Suspend at least six months. Ordered to complete educational course. Following the suspension, may petition for a limited salesperson license. Also ordered to pay costs of \$1,000. Effective 4/25/98. Secs. 452.12(3), 452.133(1)(a) and (b), 452.14(3)(i), Stats. RL 24.03(2)(b) and (c), 24.08, 17.08(1), 24.13(5). Case # LS9803263REB

DAVID J. REED, SALESPERSON
VIROQUA WI REPRIMAND

Failed to adequately represent the interests of his principals by not insuring that the notice requirements were complied with at the time that the sellers sold their property. Failed to specifically discover and disclose to the buyer the fact that the property he purchased was enrolled in the Farmland Preservation Program prior to purchase. Ordered to complete six hours of real estate related education. Also ordered to pay costs of \$300. Effective 3/26/98. Sec. 452.14 (3)(i), Stats. RL 24.025, RL 24.03 (2)(c), and RL 24.07(2) Case # LS9803262REB

REBECCA R. REVOLINSKI, SALESPERSON
WATERFORD WI SURRENDER

Represented another broker while employed by a different broker. She agreed to resolve the matter by surrendering her license. Effective 7/23/98. Sec. 452.14(3)(g), Stats. RL 24.03(2)(b). Case # LS9807234REB.

ROBIN R. BABB, BROKER
BOSCOBEL WI REPRIMAND

Failed to detect an observable adverse fact material to a transaction and to disclose that adverse fact to the buyer. Failed to create an offer to purchase and warranty deed expressing in writing the exact agreement of the parties. Ordered to pay one-half costs of the proceedings. Effective 8/27/98. Sec. 452.14(3)(i), Stats. RL 24.07 and 24.08. Case # LS9803311REB.

RAYMOND C. BABB, BROKER
SOLDIERS GROVE WI REPRIMAND

Failed in his responsibility for the correctness of entries on real estate forms. Ordered to pay one-half costs of proceeding. Effective 8/27/98. Sec. 452.14(3)(i), Stats. RL 17.08(2) and 24.17(3). Case # LS9803311REB.

BILL F. HOLMAN, BROKER
HIGHLAND WI REPRIMAND

Provided brokerage services to one or more clients or customers without a written agency agreement. Failed to have a written agreement with all parties when the date of closing was changed, by not having a written listing contract with the parties and by not providing written agency agreements with the parties. Failed to account on the written closing statement for all funds received and paid by him in connection with a transaction. He is ordered to complete 20 hours of continuing education by 1/23/99. He is also ordered to pay a forfeiture of \$1,000 and costs of \$300. Effective 7/23/98. Secs. 452.133(2)(a), 452.14(3)(h),(i), 452.135(1),(2), 452.14(3)(L), 452.137(1), Stats. RL 24.025(2), 24.08, 24.07(8), 15.03(1). Case # LS9807233REB

RANDALL C. COOK, SALESPERSON
MILWAUKEE WI LIMITED

Convicted of s. 940.30, Stats., false imprisonment, and s. 946.49 (1)(B), Stats., violation of condition of bail. Failed to timely report those convictions to the board. Ordered to have reports from his employers submitted to the board every six months. Also ordered to complete 16 hours of continuing education. Effective 4/23/98. RL 24.17 Case # LS9804231REB

BARBARA DRAPER, BROKER

LAKE VIEW REALTY INC.

FONTANA WI

SURRENDER

Intentionally concealing the true purchase price of property from her secured lender and in furtherance of that scheme, altered and drafted real estate documents to reflect a false purchase price and false expenses related to a transaction. Failed to deposit real estate trust funds into a real estate account registered with the department. Both her broker's license and the corporation's broker license are voluntarily surrendered. Effective 3/26/98. Secs. 452.133 (1)(a), 452.14 (3)(i) and (k), Stats. RL 18.031, RL 24.03(2)(b), RL 24.07 (2) and (4) Case # LS9803261REB

BALRAJ S. GILL, BROKER

SUPERIOR WI

EDUCATION

Journal entries did not show a running balance for each day on which receipts or disbursements were entered. Journal entries failed to include the name of the principal or provide an identification number so as to link the journal with the ledger. Account reconciliations were attempted but were not accurate or complete for three months. No trial balances were performed for the same three months. Did not have an interest-bearing Common Trust Account. Ordered to complete a five hour course by 1/23/99. Also ordered to pay costs of \$200. Effective 7/23/98. Secs. 452.13(2)(a),(3)(i) and 452.14(3)(L), Stats. RL 18.13(1)(a),(2),(3),(4),(5), 18.14 and 24.17(3). Case # LS9807232REB

MARC B. RANGER, BROKER

ONALASKA WI

EDUCATION

Failed, for the months of December 1997 and January 1998, to review the reconciled account statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records were valid and in agreement as of the date the account statement was reconciled. Failed to record check numbers for December 1997 disbursements in the journal. Ordered to complete 5 educational hours by 2/27/99. Also ordered to pay costs of \$200. Effective 8/27/98. Sec. 452.14(3)(i), Stats. RL 18.13(1)(b) and (5) Case # LS9808271REB

Financing Fraud Alert

Have you ever been asked to falsify information or documents in order to "help" a buyer obtain a mortgage? The board is aware that the vast majority of licensees would not give in to such a request. To do so may lead not only to a loss of license, but criminal penalties for bank fraud, as well. These

ramifications are likely well known to many of you, especially those in the Milwaukee area. Executives of a mortgage banker in Milwaukee have recently been indicted upon federal bank fraud charges, subsequent to an exhaustive investigation by the FBI. The mortgage banking firm also has recently had its license revoked by the Department of Financial Institutions for its involvement in a conspiracy to defraud lenders in connection with 40 fraudulent mortgage loans in Milwaukee. A disturbing aspect of these recent developments is that there are indications that some mortgage bankers may be involved in perpetrating such frauds with the help, either wittingly or unwittingly, of other licensed professionals such as real estate appraisers and real estate brokers.

How does a broker know whether or not others may be perpetrating a fraud upon the secondary market? Well, here are a few red flags:

- Does a significant difference exist between the actual home value or the purchase price, and the value indicated on the transfer return or the appraisal amount?
- Have you been asked to prepare and have signed more than one Offer to Purchase with differing prices? Or with one indicating that the seller is taking a second mortgage, when such is not the case or it is to be “forgiven” immediately after closing? Or, with one setting forth work credits for work that has never been done, and never will be?
- Are you aware that there are different sets of mortgage documents, each having different terms or sales prices?
- Are you aware that a prospective buyer has been asked to misrepresent any information on a loan application?

The presence of any of the above signs should alert a competent real estate broker that something less than “above board” is going on. However, they can be coated in such a fashion as to make them look attractive. And, after all, if you won’t participate in the scam, another broker will, right? Perhaps, but chances are, the other broker is going to lose their license and maybe go to jail on top of it. And, if you do, you may suffer the same fate. Such schemes inevitably fall of their own weight. Remember, a licensee may not participate in drafting any documents, including closing statements, that misrepresent the exact agreement of the parties.

Also, don’t think that these scams occur only in Milwaukee. They can happen anywhere. If you think they have, or are, contact the department. Such reporting meets the obligation of licensees to protect the public against fraud, misrepresentation and unethical practices in this area under RL 24.03(2)(b).

1997-1998 REAL ESTATE CONTINUING EDUCATION REQUIREMENTS

All licensees, except those who were issued their first Wisconsin real estate license after January 1, 1997, must satisfy the continuing education requirement during 1997-98 in order to renew their license in a timely manner in the fall of 1998. The license renewal deadline is December 31, 1998. Licensees may complete the 1997-98 continuing education after that date; however, their license may not be renewed until they complete the education and pay a late renewal fee of \$25 and they may not engage in the practice of real estate after that date.

For the remainder of the 1997-98 licensing biennium, the test-out exam is not available and the alternative for completing the requirement is the following:

Continuing Education Courses Approved by the Department

4 courses of at least 3 hours in length at a school approved by the Department. The 4th Course ONLY has options which relate to specific areas of practice. **All courses must be approved by the Department before a school may grant a certificate of attendance to a licensee.**

Course 1	Listing Issues (Everyone must take.)
Course 2	Offer to Purchase and Other Sales Contracts (Everyone must take.)
Course 3	New Developments (Everyone must take.)
Course 4A	General Real Estate Practice Elective (Everyone must take this elective OR one of the other 4 electives.)
Course 4B	Broker-Manager Elective (Everyone must take this elective OR one of the other 4 electives.)
Course 4C	Commercial Elective (Everyone must take this elective OR any of the other 4 electives.)
Course 4D	Property Management Elective (Everyone must take this elective OR one of the other 4 electives.)
Course 4E	Rural/Farm/Vacant Land Elective (Everyone must take this elective OR one of the other 4 electives.)

Department of Regulation and Licensing
Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

REGULATORY DIGEST

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Telephones

The Division of Business Licensure & Regulation has a menu telephone system which is designed to more efficiently direct the caller to the appropriate section. The telephone number for staff is: (608) 266-5511.

After dialing this number you are asked to press 1, 2, 3 or 4. For the following requests, please press extension numbers as noted:

Applications Processing	Ext. 43
Education	Ext. 21
Name/Address Changes	Ext. 21
Practice Questions	Ext. 43
Complaint Forms	Ext. 12
Application Forms	Ext. 11

Fax Number

(608) 267-3816

Digests on Web Site: November, 1997; June, 1998.

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>
Send comments to dorl@mail.state.wi.us

Board Meetings

December 10, 1998, January 28, 1999, February 25, 1999

Wisconsin Statutes and Code

Copies of the Real Estate Board Statutes and Administrative Code can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated March, 1998.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.